UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PRIME HEALTHCARE SERVICES - ENCINO, LLC d/b/a/ ENCINO HOSPITAL MEDICAL CENTER,	
Respondent,	
SEIU LOCAL 121RN,	**Cases: 31-CA-066061** **31-CA-070323**
Union,	
and,	
SEIU UNITED HEALTHCARE WORKERS-WEST,	**Case: 31-CA-080554**
Union; and	
PRIME HEALTHCARE SERVICES – GARDEN GROVE, LLC d/b/a GARDEN GROVE HOSPITAL & MEDICAL CENTER,	**Cases: 21-CA-080722**
Respondent,	
SEIU UNITED HEALTHCARE WORKERS-WEST,	
Union.	

RESPONDENTS' EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE JEFFREY D. WEDEKIND'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("Board"), Respondents Prime Healthcare Services - Encino, LLC d/b/a Encino Hospital Medical Center ("Encino") and Prime Healthcare Services - Garden Grove, LLC d/b/a Garden Grove Hospital & Medical Center ("Garden Grove"; together with Encino, the "Respondents")

respectfully submit the following exceptions to the November 13, 2014 Decision of Administrative Law Judge ("ALJ") Jeffrey D. Wedekind:

1. ALJ Wedekind erred in finding that "Respondents had an obligation under the Act to continue paying anniversary step wage increases to eligible unit employees after the contract expired." (ALJD, p. 9, lines 28-30). This conclusion is not supported by the evidence or the law.

2. ALJ Wedekind erred in finding that "an employer must continue [anniversary wage step increases] in effect postexpiration until the parties have reached either a new agreement or a valid impasse, unless the employer can show that the union clearly and unmistakably waived the right to bargain over ceasing them." (ALJD p. 9, lines 31-34). This conclusion is not supported by the law.

3. ALJ Wedekind erred in finding that "Respondents have failed to show that there was a clear and unmistakable waiver" of the Unions' right to bargain over the cessation of the anniversary wage step increases. (ALJD p. 10, line 1). This conclusion is not supported by the evidence or the law.

4. ALJ Wedekind erred in finding that "[t]here is no language in section 5 indicating that the anniversary step wage increases would end when the contracts expired. Nor do the references in section 5 to annual wage increase or the 9.25 percent annual cap on total wage increases clearly indicate that the anniversary wage increases would end." (ALJD p. 10, lines 2-5). This statement is not supported by the evidence or the law.

5. ALJ Wedekind erred in finding that "[t]he only reference in section 5 to the annual wage increases is the statement that employees would receive anniversary step wage increases 'in addition to' annual wage increases. This statement does not clearly indicate that the

employees would receive the former only if they received the latter." (ALJD p. 10, lines 5-8). This conclusion is not supported by the evidence or the law.

6. ALJ Wedekind erred in finding that the "'sound arguable basis' standard applies only to alleged midterm modifications of agreements, not to alleged postexpiration unilateral changes." (ALJD p. 10, lines 18-19). This conclusion is not supported by the law.

7. ALJ Wedekind erred in finding that, "even if the 'sound arguable basis' standard were applicable here, I would find that Respondents have failed to satisfy it for essentially the same reasons stated above, i.e. because the cited references in section 5 to annual wage increases and the 9.25 percent annual cap on total wage increases cannot by themselves reasonably be interpreted to mean that anniversary step wage increases were conditioned on annual wage increases." (ALJD p. 10 lines 22-26). This conclusion is not supported by the evidence or the law.

8. ALJ Wedekind erred in finding that "the Respondents (per Schottmiller, their lead negotiator and admitted agent) orally agreed with the Unions in April 2011, shortly after the contracts expired, that the anniversary step wage increases would continue at the hospitals. It is well established that oral agreements may be binding." (ALJ p. 10, lines 28-31). This conclusion is not supported by the evidence or the law.

9. ALJ Wedekind erred in finding that Encino's inadvertent continuation of the anniversary wage increases until mid-November 2011 "was sufficient under Board law, even apart from the oral agreements, to prevent Encino from unilaterally ceasing such increases without notice or bargaining with 121RN and UHW." (ALJD p. 10, line 41 to p. 11, line 2). This conclusion is not supported by the law.

10. ALJ Wedekind erred in finding that "Encino had an obligation under the Act to provide 121RN with all of the information requested in Salm's April 2011 letter." (ALJD p. 15, lines 27-28.) This conclusion is not supported by the evidence or the law.

11. ALJ Wedekind erred in finding that "[t]here was nothing unusual about Salm's request for information about Encino's costs of providing healthcare to unit employees, and the Board has repeatedly held that such information is presumptively relevant, particularly during contract negotiations. (ALJD p. 15, Lines 28-31). This conclusion is not supported by the evidence or the law.

12. ALJ Wedekind erred in finding that, "[a]s for Salm's requests for information about unit employees' access to Prime facilities and the quality of care at those facilities, that information was obviously relevant given that the employees were required under the Prime EPO plan to obtain medical treatment at Prime facilities[,]" and that "Salm clearly explained [the relevance of that information] to Schottmiller." (ALJ p. 16, lines 4-8). This conclusion is not supported by the evidence or the law.

13. ALJ Wedekind erred in finding that "Encino has failed to establish any legitimate basis for not providing the requested information to 121RN." (ALJD p. 16, lines 10-11). This conclusion is not supported by the evidence or the law.

14. ALJ Wedekind erred in finding that "121RN had no duty to provide any further explanation or information regarding its relevance to Schottmiller; rather, the burden was on Encino to show why the information was not relevant.... Encino has failed to do so." (ALJD p. 16, lines 15-18). This conclusion is not supported by the evidence or the law.

15. ALJ Wedekind erred in finding that "Encino cannot avoid its statutory obligations to provide such presumptively relevant cost information to the Union simply because

it chooses to provide healthcare to its employees directly through Prime, its parent company, rather than through other providers." (ALJD p. 16, lines 28-31). This conclusion is not supported by the evidence or the law.

16. ALJ Wedekind erred in finding that "Respondents have failed to establish that UHW's reports based on MS-DRG and other data were false or incorrect." (ALJD p. 17, lines 9-10). This finding is based upon an erroneous evaluation of the evidence introduced at the hearing.

17. ALJ Wedekind erred in finding that "a union is presumed to act in good faith in requesting information ... [a]nd the mere fact that UHW had used similar MS-DRG data to issue critical reports about Prime was insufficient to rebut that presumption or justify its failure to provide the information to 121RN." (ALJD p. 17, lines 12-15). This conclusion is not supported by the evidence or the law.

18. ALJ Wedekind erred in finding that "Encino and Garden Grove were obligated under the Act to provide UHW with the information requested in Ruppert's January 2012 letters." (ALJD p. 21, lines 14-16). This conclusion is not supported by the evidence or the law.

19. ALJ Wedekind erred in finding that "Ruppert's requests for information about access and costs under Prime's EPO and PPO plans were plainly relevant on their face ... [and that] Ruppert fully explained their relevance." (ALJD p. 21, lines 16-18). This conclusion is not supported by the evidence or the law.

20. ALJ Wedekind erred in finding that "Respondents have failed to establish a legitimate basis for not providing any of the information requested by Ruppert." (ALJD p. 21, lines 20-21). This conclusion is not supported by the evidence or the law.

21. ALJ Wedekind erred in finding that "Respondents failed to present any evidence that UHW's asserted disqualifying conflict of interest and/or conduct had anything whatsoever to do with Respondents' alleged unlawful actions." (ALJD p. 22, lines 1-3). This conclusion is based upon an erroneous evaluation of the evidence introduced at hearing.

22. ALJ Wedekind erred in finding that, because Respondents have not withdrawn recognition and continued to bargain with SEIU United Healthcare Workers West ("UHW"), "Respondents cannot now assert a defense to the discreet 8(a)(5) allegations in this proceeding that they never had to recognize and bargain with UHW in the first place." (ALJD p. 22, lines 14-16). This conclusion is not supported by the law.

23. ALJ Wedekind erred in finding that, "[u]ntil such time as [Respondents] lawfully refuse to bargain and withdraw recognition from UHW, they must comply with their bargaining obligations under the Act." (ALJD p. 22, lines 16-17). This conclusion is not supported by the law.

24. ALJ Wedekind erred in finding that, "even assuming arguendo that Respondents may properly assert a disqualification defense in the present circumstances, they have failed to prove the defense." (ALJD p. 23, lines 1-2). This conclusion is not supported by the evidence or the law.

25. ALJ Wedekind erred in finding that, "[a]s for UHW's 'corporate accountability campaign' against Prime, Respondents have failed to establish that there was anything disqualifying about it." (ALJD p. 24 lines 4-5). This conclusion is not supported by the evidence or the law.

26. ALJ Wedekind erred in finding that UHW's press releases "addressed matters plainly relevant to the unit employees' terms and conditions of employment." (ALJD p. 24, line 14). This conclusion is not supported by the evidence or the law.

27. ALJ Wedekind erred in finding that "Respondents have failed to show that UHW's reports and related actions to prevent Prime from acquiring additional hospitals exceeded the bounds of protected conduct." (ALJD p. 24, lines 23-24). This conclusion is not supported by the evidence or the law.

28. ALJ Wedekind erred in finding that "Respondents never established that [UHW's reports] were incorrect." (ALJD p. 24, lines 26-27). This finding is based upon an erroneous evaluation of the evidence introduced at the hearing.

29. ALJ Wedekind erred in finding that "*Sahara Datsun, Inc.*, 278 N.L.R.B. 1044, 1046 (1986), the primary case cited by Respondents, is clearly distinguishable." (ALJD p. 25, lines 15-16). This conclusion is not supported by the evidence or the law.

30. ALJ Wedekind erred in finding that "the Union's reports addressed issues relevant to the unit employees' own healthcare, and accurately cited publicly available Medicare data." (ALJD p. 25, line 19 to p. 26, line 1). This conclusion is not supported by the evidence or the law.

31. ALJ Wedekind erred in finding that "Respondents and their parent Prime, who own and manage the hospitals, are uniquely in possession of all the information relevant to whether the stated conclusions in UHW's reports about Prime are baseless." (ALJD p. 25, fn 39). This finding is based upon an erroneous evaluation of the evidence introduced at the hearing.

32. ALJ Wedekind erred in failing to grant Respondents' request for reasonable attorneys' fees and costs. (ALJD p. 26, fn. 40). This decision is not supported by the evidence or the law.

33. ALJ Wedekind erred in recommending the remedies set forth in the decision. (ALJD, p. 27, lines 1-16). These remedies are not supported by the evidence or the law.

34. ALJ Wedekind erred in recommending the order set forth in the decision. (ALJD, p. 27, line 20 to p. 29, line 35). This order is not supported by the evidence or the law.

Respectfully Submitted,

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Dated: January 8, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2014, a copy of the Respondents' Exceptions to Administrative Law Judge Wedekind's Decision was filed electronically and served upon the following:

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